

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: JEFFREY KEARNEY, Respondent
 Arkansas Bar ID #91249
 CPC Docket No. 2010-006

FILED

APR 30 2010

**LEGLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from a grievance filed by Michael Myhand and Mary Ann Keller on April 22, 2009. The information in the formal charges of misconduct involved Jeffrey Kearney, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas, in his representation of Myhand and Keller in a probate matter.

On January 26, 2010, Mr. Kearney was served with a formal complaint, supported by information contained in the Affidavits of Michael Myhand and Mary Ann Keller, court documents, and correspondence between Mr. Kearney, his clients, and opposing counsel. Mr. Kearney failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2008), constitutes an admission of the factual allegations of the formal complaint and extinguishes a Respondent Attorney's right to a public hearing.

The factual information before the Committee reflects that Michael Myhand and Mary Ann Keller hired Jeffrey Kearney and Kearney Law Offices on December 4, 2006, over objections they had to the appointment of their brother David Myhand as executor of their deceased father's estate pursuant to the father's will. According to the will, executed in 1993, David was to inherit as his sole property Myhand Aircraft, Inc, and the other siblings, including David, Michael, and Mary Ann were to inherit all the rest and remainder of the father's estate

equally. David was appointed executor of the will as provided for in the will. The Order admitting the will to probate and appointing executor was entered of record on November 1, 2006.

On December 18, 2006, Jeffrey Kearney entered an appearance in the matter and filed a Motion to Set Aside Order Admitting Will to Probate and Appointment of Personal Representative. The Motion to Contest the Will was not verified as required by Ark. Code Anno. §28-1-109. In the Motion, Mr. Kearney requested that Michael and Mary Ann be appointed as co-administrators of the estate. In response to the Motion, the attorney for the executor of the Will filed an Answer and a Motion for Rule 11 Sanctions. A hearing on Mr. Kearney's pending Motion was set for April 5, 2007.

During the April 5 hearing, Mr. Kearney, citing the need for more time for discovery, requested a continuance be granted in the matter. Opposing counsel objected, arguing the personal representative was ready to proceed with the hearing and that Mr. Kearney had ample time for discovery starting in January when Mr. Kearney first filed his Motion. The court denied the continuance and required Mr. Kearney to go forward with the hearing. Mr. Kearney then dismissed the Motion, requesting that it be dismissed without prejudice, telling the Court that they planned to refile their motion for hearing. The Court granted the motion to dismiss the matter, but did not make a ruling as to whether it was dismissed with or without prejudice. No hearing had yet been set on opposing counsel's Motion for Rule 11 Sanctions.

On May 1, 2007, Mr. Kearney filed an Amended Verified Motion to Set Aside Order Admitting Will to Probate and Appointment of Personal Representative. Opposing counsel for David, administrator of the estate, filed a Motion to Strike and Dismiss the Amended Motion

along with a brief in support thereof. Several responses and counter-responses were filed by both sides. Opposing counsel filed an Amendment to Motion to Strike and Brief in support thereof, on June 26, 2007, arguing that Michael and Mary Ann had failed to timely file their Will contest by not complying with Arkansas Rule of Civil Procedure 28-49-113(b)(2), [although it is presumed opposing counsel meant Ark. Code Anno. §28-49-113(b)(2)] . Although the original Motion filed on December 18, 2006, was filed within the required statutory time frame, it was dismissed and the Amended Motion filed on May 1, 2007, was argued by opposing counsel for the estate administrator to be outside the required statutory time frame.

On July 31, 2007, opposing counsel submitted Interrogatories and Requests for Production of Documents to Mr. Kearny's client by mailing them to Mr. Kearney. Michael and Mary Ann never were told of the discovery requests and therefore did not respond. Having failed to receive the responses to his discovery within the required time frame, opposing counsel filed a Motion to Compel on September 10, 2007, and the Court granted the Motion on September 12, 2007. Even with an Order compelling response to the discovery, Mr. Kearney never notified his clients of the discovery request, motion, or order compelling response to the discovery request. In addition to the multiple pending motions, the Motion for Rule 11 Sanctions was still pending. However, before the Court could resolve the issues raised by opposing counsel's Motion and Amended Motion to Strike, the Court set a hearing on the Motion for Rule 11 Sanctions . The first hearing was continued at the request of Mr. Kearney and a second hearing was set. On August 2, 2007, Mr. Kearney sent a letter to the Court requesting that the Court set aside the hearing date until such time as it rules on the opposing counsel's pending Motions to Strike and Dismiss. The Court responded in written letter on August 3, 2007, denying Mr. Kearney's request. The Court also reminded Mr. Kearney that it had not ruled on the dismissal issue, and that the attorneys had the

option of submitting briefs on the matter. Opposing counsel for the estate representative had submitted a brief and Mr. Kearney had not. The Court gave Mr. Kearney a deadline of August 10, 2007, should he choose to submit a brief on the dismissal issue.

On September 14, 2007, the Court made its final ruling on the pending Motions regarding the issue of dismissal of the Will contest filed by Mr. Kearney, agreeing with opposing counsel that Mr. Kearney's Amended Motion was not filed within the statutorily required time frame, and that Mr. Kearney's earlier dismissal of his Motion was with prejudice. Michael and Mary Ann decided to hire another attorney to represent them in this matter in early 2009 and a substitution of counsel was entered by the Court discharging Mr. Kearney from the case.

Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Jeffrey Kearney's conduct violated Rule 1.1 when (a) due to his lack of knowledge of the probate code, he dismissed his clients' action to the detriment of his clients, in that the dismissal was with prejudice, which barred his them from being able to bring their cause of action in the future; (b) he failed to notify his clients of the discovery requests propounded upon them and failed to assist them in responding, even after the court entered and order compelling responses, Mr. Kearney failed to notify his clients of the discovery requests; and (c) his lack of knowledge of the probate code caused him to fail to file a verified petition as required by Ark. Code Anno. §28-1-109. Rule 1.1 states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Jeffrey Kearney's conduct violated Rule 1.4(a)(3) when he failed to notify his

clients about the discovery requests propounded upon them and failed to assist them in responding, and even after the Court entered an order compelling response, Mr. Kearney failed to notify his clients of such discovery requests. Rule 1.4(a)(3) provides that a lawyer shall keep the client reasonably informed about the status of the matter.

3. That Jeffrey Kearney's conduct violated Rule 3.4(c) when the Court entered an order directing Mr. Kearney to respond to the discovery propounded to his client by opposing counsel, which order Mr. Kearney disobeyed by failing to respond. Rule 3.4(c) states that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

4. That Jeffrey Kearney's conduct violated Rule 3.4(d) when Mr. Kearney failed to respond to the discovery propounded to his client by opposing counsel, even after the court entered an order compelling response. Rule 3.4(d) states that a lawyer shall not in pretrial procedure, make a frivolous discover request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

5. That Jeffrey Kearney's conduct violated Rule 8.4(d) when Mr. Kearney's lack of knowledge of the probate code caused him to dismiss his clients' action to their detriment, in that the dismissal was with prejudice, costing his clients their opportunity to challenge the Will. Rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JEFFREY KEARNEY, Arkansas Bar ID #91249, be, and hereby is, **REPRIMANDED** for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures, Mr. Kearney is assessed the costs of this

proceeding in the amount of **FIFTY DOLLARS (\$50.00)**. In addition, the Committee imposes a fine of **ONE THOUSAND DOLLARS (\$1,000.00)** pursuant to Section 18.B of the Procedures. Mr. Kearney is separately sanctioned for his failure to respond to the disciplinary complaint. The separate sanction imposed is a **REPRIMAND**. The fine and costs assessed herein, totaling **ONE THOUSAND FIFTY DOLLARS (\$1,050.00)**, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: _____

T. Benton Smith, Jr., Chair, Panel A

Date: _____

March 30, 2010